

TOWNSEND  
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and  
CREW  
LLP

**San Francisco**

Two Embarcadero Center  
Eighth Floor  
San Francisco, California 94111-3834  
Tel 415.576.0200  
Fax 415.576.0300

May 27, 2008

***VIA E-MAIL***

Re: Phoenix Solutions Inc. v. Wells Fargo and Company  
N.D. Cal. No. C08-00863 MHP MED

Dear Counsel:

As you know, I have been appointed by the District Court to serve as the mediator in this case under the court's Mediation program. Please be sure to review carefully ADR L.R. 6 which governs the Mediation program. I have attached a resume describing my professional experience.

Pursuant to ADR L.R. 6-6, I will conduct a phone conference with all counsel before the formal mediation to discuss the following:

- ▶ the procedures to be followed;
- ▶ the nature of the case;
- ▶ appropriate dates for the mediation and anticipated length of the session;
- ▶ the parties who must be present under ADR L.R. 6-9 and the parties who need to be present to have a productive mediation session;
- ▶ ideas to improve the effectiveness of the mediation session or matters that could pose impediments;
- ▶ requirements for your written mediation statements;
- ▶ any questions you might have about how I normally conduct mediations; and
- ▶ any questions you might have about the mediation program.

I anticipate that the telephone conference will last approximately one-half hour. I have set the telephone conference for June 6, 2008 at **9:30a.m. (Pacific Time)**. Please use the following dial-in number: **866-805-0850**, passcode: 415-576-0200. *Please e-mail my secretary, Stacie Treposkoufes, at [sstreposkoufes@townsend.com](mailto:sstreposkoufes@townsend.com), within 24 hours after receiving this letter to confirm your availability. If you are not available, please let opposing counsel and me know alternative times within a week of this date when you are available.* Before the telephone conference, please ascertain from your clients and any insurers a selection of dates upon which the mediation may be conducted.

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My conflicts check revealed no actual or potential conflicts of interest under 28 U.S.C. §455(a) and (b). I and Townsend have performed work for Sony Computer Entertainment Inc. and Sony Computer Entertainment America. These companies make and sell the PlayStation® videogame system. I am aware that Phoenix Solutions has asserted patent claims against Sony Corporation; I have no involvement in that matter or any knowledge about the claims. Please let me know if this causes you any concern. I am not aware of any other circumstances that would compromise my impartiality or the appearance of impartiality.

Although utilizing my services as a mediator you agree that neither you nor your clients will, in the future, seek to disqualify me or Townsend and Townsend and Crew LLP from representing parties adverse to you or your clients in any matter unrelated to the subject matter of this mediation. Enclosed with this letter is an Agreement Regarding Confidentiality and Conflicts that each party will be asked to sign at the mediation. If any portion of it is not acceptable to you or your clients please notify me right away.

ADR L.R. 6-3(a) provides that court-appointed mediators will volunteer their preparation time and the first four hours in a mediation. For this matter, however, I will volunteer my preparation time and the first eight hours (in one day) of a mediation.

If the parties are unable to resolve this matter after one day of mediation, desire to continue the mediation process further, and would like me to serve as the mediator, then my charges would be \$2,000 for a half-day (9:30am until 1:30pm) or \$4,500 for a full day (9:30am until 6:00pm). Payment of those fees would be required in advance of the follow-on mediation session. You are under no obligation whatsoever to employ my services as a mediator after our court-ordered session.

I look forward to speaking with you soon and assisting you on this case.

Sincerely yours,



James G. Gilliland, Jr.

JGG/sst  
Enclosures  
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cc: ADR Case Administrator (via e-mail)